

IN RE: AMENDMENT OF IDAHO)
CRIMINAL RULES (I.C.R.) 11(f)(2), 32,)
33(d)(2) and 33.3)
_____)

**ORDER AMENDING
RULES**

The Court having reviewed proposed amendments to the Idaho Criminal Rules, including a recommendation from the Domestic Assault and Battery Evaluator Advisory Board, and the Court having fully considered the same;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Criminal Rules as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That Rule 11 be, and the same is hereby, amended to read as follows:

Rule 11. Pleas.

(f) Plea agreement procedure.

(2) **Notice of such agreement.** If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision ~~(d)~~(f)(1)(A), (C) or (D), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subdivision ~~(d)~~(f)(1)(B), the court shall advise the defendant that if the court does not accept the recommendation or request the defendant nevertheless has no right to withdraw his plea.

2. That Rule 32 be, and the same is hereby, amended to read as follows:

Rule 32. Standards and procedures governing presentence investigations and reports.

The following standards and procedures shall govern presentence investigations and reports in the Idaho courts:

(e) Information which may be included in the presentence report.

(1) **Content.** The presentence report may include information of a hearsay nature where the presentence investigator believes that the information is reliable, and the court may consider such information. In the trial judge's discretion, the judge may consider material contained in the presentence report which would have been inadmissible under the rules of evidence applicable at a trial. However, while not all information in a presentence report need be in the form of sworn testimony and be admissible in trial, conjecture and speculation should not be included in the presentence report. Any pictures or depictions of child pornography that are included as attachments to the report must be placed in a separate envelope and marked as such, with access restricted to only those allowed by the trial court.

(g) Access to presentence report.

(1) **Disclosure of report, exceptions.** Full disclosure of the contents of the presentence report shall be made to the defendant, defendant's counsel, and the prosecuting attorney prior to any hearing on the sentence except as hereinafter provided. The defendant and defendant's attorney shall be given a full opportunity to examine the presentence investigation report so that, if the defendant desires, the defendant may explain and defend adverse matters therein. The defendant shall be afforded a full opportunity to present favorable evidence in defendant's behalf during the proceeding involving the determination of sentence. Provided, however, the trial court may withhold from disclosure parts of the presentence report which contain diagnostic opinion which might seriously disrupt a program of rehabilitation, or information which in the court's discretion may prove harmful to an individual not a party in the proceeding, or pictures or depictions of child pornography that are separately identified pursuant to subsection (e)(1).

(h) Disclosure of presentence reports.

(3) **Availability of presentence report on appeal.** When relevant to an issue on which an appeal has been taken, the report shall be available for review in courts of appeal when requested by a party or ordered by the court pursuant to Idaho Appellate Rule 31(b). Pictures and depictions of child pornography contained in the report that are placed in a separate envelope pursuant to subsection (e)(1) of this rule shall not be transmitted to the parties or the court as part of the appeal unless specifically requested.

3. That Rule 33(d)(2) be, and the same is hereby, amended to read as follows:

Rule 33. Sentence and judgment.

(d) **Commutation of sentence and suspending or withholding judgment, conditions.** For an offense not punishable by death, the district court or the magistrates division may commute the sentence, suspend the execution of the judgment, or withhold judgment, and place the defendant upon probation as provided by law and these rules. Provided, however, that the conditions of a withheld judgment or of probation shall not include any requirement of the contribution of money or property to any charity or other nongovernmental organization, but may include the rendering of labor and services to charities, governmental agencies, needy citizens and nonprofit organizations. The conditions of a withheld judgment or probation may also include, among other lawful provisions, the following:

(1) A requirement that the defendant make restitution to a party injured by the defendant's action.

(2) A requirement that the defendant pay a specific sum of money to the court for the prosecution of the criminal proceedings against the defendant, or a sum of money not to exceed the fine and court costs which could otherwise be assessed if the sentence were not suspended or withheld, which funds shall be distributed in the manner provided for the distribution of fines and forfeitures under section ~~19-4507~~, 19-4705 Idaho Code.

4. That Rule 33.3 be, and the same is hereby, amended to read as follows:

Rule 33.3. Evaluation of persons guilty of domestic assault or domestic battery.

(a) **Evaluators.** Evaluators of persons who plead guilty or are found guilty of domestic assault or domestic battery under Idaho Code Section 18-918 shall be approved and shall serve under the following provisions:

(1) **Qualifications.** An evaluator under Idaho Code Section 18-918(7)(a) shall have the following qualifications:

(A) Licensed physician, licensed psychologist, licensed master social worker, licensed social worker if approved prior to July 1, 2008, licensed professional counselor, licensed marriage and family therapist, licensed registered nurse, licensed nurse practitioner or physician's assistant under the laws of the state of Idaho; an evaluator may be licensed in the state of Idaho or any other state;

(B) ~~Evidence~~ Twenty (20) hours of specialized education or training in domestic violence within the previous two years that meets the criteria set out in subsection (2), as evidenced by an attached certificate of completion or other supporting documentation;

(C) One year experience after licensure in assessment or treatment of domestic violence related issues; and

(D) Approved by the Domestic Assault and Advisory Board and maintained on a roster by the Administrative Director of the Courts as persons eligible to conduct evaluations of persons guilty of assault or domestic battery. In the event there is no evaluator approved within the judicial district, then the requirements of (B), (C), and (D) may be waived by the court.

(2) **Continuing Education of Evaluators.** Beginning the next July 1 after an evaluator has been approved by the Domestic Assault and Advisory Board, the evaluator must take at least sixteen (16) hours of specialized training in domestic violence, or related topics in courses approved by the Domestic Assault and Advisory Board, in each and every two (2) year period following the July 1 date. An evaluator must file proof of compliance with this requirement with the Administrative Director of the Courts by July first of the year the continuing education is due. Along with proof of compliance, an evaluator must also send proof of current licensing.

(A) The sixteen (16) hours of training required in this section shall be in one or more of the following areas: (a) domestic violence; (b) violence in families; (c) child abuse; (d) anger management; (e) ~~prediction or evaluation of risk factors for~~ future dangerousness; (f) psychiatric causes of violence; or (g) drug and alcohol abuse. However, no more than four (4) of the sixteen (16) required hours may be in the area of drug and alcohol abuse.

(B) The sixteen (16) hours of required training in this section shall be acquired by completing a program approved or sponsored by one of the following associations: (a) Idaho Psychiatric Association; (b) Idaho Psychologists Association; (c) Idaho Nursing Association; (d) Idaho Association of Social Workers; (e) Idaho Counselors Association; (f) Council on Domestic Violence and Victim Assistance; (g) Idaho Coalition Against Sexual Assault and Domestic Violence, or the national equivalent of any of these organizations.

(C) Any program that does not meet the criteria set out in both section (a)(2)(A) and section (a)(2)(B) may be submitted to the board for approval either prior to or after completion.

(3) **Appointment Approval.** All evaluators under Idaho Section 18-918(8)(a) must be appointed approved by order of the Domestic Assault and Advisory Board. Any person desiring to be approved as an evaluator shall file an application for approval with the Administrative Director of the Courts indicating the qualifications of the applicant and the dates and content of relevant training courses attended. An evaluator approved by order of the Domestic Assault and Advisory Board may continue in service from one calendar year to the next unless otherwise ordered by the Domestic Assault and Advisory Board. The Administrative director of the Courts shall maintain a statewide list of approved evaluators by the Domestic Assault and Advisory Board.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective the first day of July, 2008.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Criminal Rules.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 4th day of April, 2008.

By Order of the Supreme Court

_____/s/_____
Daniel T. Eismann
Chief Justice

ATTEST:_____/s/_____
Clerk